

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR-Amex-95-34 and should be submitted by September 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 95-21848 Filed 8-31-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36159; File No. SR-CBOE-95-07]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment to a Proposed Rule Change Relating to Solicited Transactions

August 25, 1995.

#### I. Introduction

On February 14, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to modify Paragraph (e) of CBOE Rule 6.9

concerning solicited transactions. The proposal would eliminate the requirement that the terms of a matching order be disclosed to the trading crowd before a member or associated person would be permitted to trade based on knowledge of an imminent, undisclosed solicited transaction. The proposed rule change was published for comment and appeared in the **Federal Register** on March 28, 1995.<sup>3</sup> No comments were received regarding the original proposal. On June 22, 1995, the CBOE filed Amendment No. 1 to its proposal.<sup>4</sup> This order approves the proposal, as amended.

#### II. Description of the Proposal

On November 9, 1994, the Commission approved a CBOE proposal to adopt a new Rule 6.9 that regulates the execution of solicited orders, and sets forth specific priority principles applicable to such orders. In addition, Rule 6.9(e) restricts trading by members and associated persons of members possessing knowledge of imminent undisclosed solicited transactions.<sup>5</sup>

Paragraph (e) of CBOE Rule 6.9 generally restricts the ability of a member, or an associated person, who has indicated in response to a solicitation an intention to place a responsive order, and anyone aware of that intention, to trade options of the same class as any option that is the subject of the original order, or securities underlying such options, or any related instruments. If either of two conditions is met, however, the restriction does not apply. The first condition is that all the terms of both the original order and the matching

order be disclosed to the trading crowd.<sup>6</sup>

The Exchange now proposes to amend paragraph (e) to eliminate the requirement contained in the first condition that the terms of the solicited matching order be disclosed to the trading crowd. Thus, when there has been advance solicitation of the other side of an original order, a member (or associated person) with knowledge of the original order and a matching responsive order is not permitted to trade options of the same class as any option that is the subject of the original order, the securities underlying such options, and any related instruments, until the terms of the original order, and any changes in the terms and conditions of the original order of which the member or associated person has knowledge,<sup>7</sup> are disclosed to the trading crowd; once those terms are disclosed, however, the member or person associated with the member may trade even if the terms of the matching order are not disclosed. The Exchange has stated that this modification would place solicited parties on an equal footing with Exchange members who have knowledge of the terms of the original order only, and would conform the trading restriction in paragraph (e) to the various priority provisions of Rule 6.9, and Interpretation .02 thereunder, which generally require disclosure only of the terms of an original order, not the terms of a matching solicited order.

Finally, the Exchange has proposed adding Interpretation .06 to Rule 6.9. Interpretation .06 states that disclosing all the terms of the original order and any changes in the terms and conditions of the original order to the crowd prior to effecting a trade does not provide a safe harbor from possible violations of front-running prohibitions, and that front-running is considered to be a violation of Exchange Rule 4.1, Just and Equitable Principles of Trade.<sup>8</sup>

#### III. Discussion

The Commission finds the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act because the proposal is designed to remove impediments to and perfect the

<sup>3</sup> See Securities Exchange Act Release No. 35519 (March 21, 1995), 60 FR 15948.

<sup>4</sup> Amendment No. 1 effects two changes to the Exchange's proposal. First, Paragraph (e) of Rule 6.9 is revised to state explicitly that any change in the terms and conditions of the original order, as it is entered on the trading floor and of which the member has knowledge where there is a matching solicited order, must also be disclosed to the trading crowd before that member or that person associated with a member could permissibly trade an option of the same class as any option that is the subject of the original order, a security underlying such class, or a related instrument. Second, the Exchange proposes adding a new Interpretation .06 to Rule 6.9 stating that disclosing the terms and conditions of the original order any changes to the original order pursuant to Paragraph (e) for Rule 6.9 does not provide a safe harbor from possible front-running prohibitions. Front-running is considered to be a violation of CBOE Rule 4.1. See letter from Timothy Thompson, CBOE, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated June 22, 1995 ("Amendment No. 1").

<sup>5</sup> See Securities Exchange Act Release No. 34959 (November 9, 1994), 59 FR 59446.

<sup>6</sup> The second condition is that the solicited order can no longer reasonably be considered imminent in view of the passage of time since the solicitation.

<sup>7</sup> See Amendment No. 1, *supra* note 4.

<sup>8</sup> *Id.*

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

mechanism of a free and open market, and protect investors and the public interest. The Commission believes that the CBOE's proposal is appropriate to achieve Rule 6.9's primary purpose of facilitating and regulating solicited transactions without imposing undue restrictions on trading, particularly anticipatory hedge transactions. Under the present rule, once a solicited party has indicated, in response to a solicitation, an intention to place a matching responsive order, such a solicited party may not trade based on knowledge of the impending solicited transaction, even though the original order has been fully disclosed to the crowd, until the solicited order is also disclosed.

The Commission notes that paragraph (e) does not restrict trading by other CBOE members who know the terms of a disclosed original order but who, if solicited, have not indicated an intention to trade at the original order's limit and who are otherwise unaware of any specific matching solicited order. Indeed, such parties may trade under the current rule even though they have good reason to believe that an execution of the original order is imminent based on market circumstances.

The Commission believes that once the terms and conditions of an original order, as well as any changes to the terms and conditions of the original order of which the member or associated person has knowledge,<sup>9</sup> are fully disclosed to the trading crowd, those in the crowd have essentially the same market information as do solicited persons. Moreover, any solicited person who has privately indicated an intention to place a responsive order, and anyone aware of that intention, necessarily remains subject to the risks of the market and the auction process when entering a responsive order or effecting anticipatory trades.

The Commission further believes that the narrower disclosure requirement before granting relief from the trading restrictions described above will provide the trading crowd with a fair and full opportunity to make informed trading decisions without subjecting solicited parties and the solicitation process to overly burdensome

restrictions. Nevertheless, the Commission notes that this narrower disclosure requirement does not relieve market participants of the general CBOE requirement that their acts and practices be consistent with just and equitable principles of trade.<sup>10</sup> Thus, disclosing the terms and conditions of the original order, and any changes in the terms and conditions of the original order, to the crowd prior to effecting a trade does not provide a safe harbor from possible violations of front-running prohibitions. The Commission understands that the Exchange will issue a regulatory circular to its members describing the revisions to its solicitations rule.

Finally, the Commission notes that the Exchange's proposal relates only to the provision in the solicitations rule that restricts trading based on knowledge of an imminent undisclosed transaction. Thus, the Exchange's proposal does not affect the priority rules governing solicited transactions.<sup>11</sup>

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 revises Paragraph (e) of Rule 6.9 by making it clear that any change in the terms and conditions of the original order must be disclosed to the crowd before a member or associated person with knowledge of such terms and conditions can enter into related transactions. Amendment No. 1 also adds Interpretation .06 to Rule 6.9 to make clear that Paragraph (e) of Rule 6.9 does not provide a safe harbor from possible violations of front-running prohibitions.<sup>12</sup>

The Commission believes that these changes serve to strengthen and clarify the Exchange's proposals. Specifically, the revision to Rule 6.9, Paragraph (e) addresses the concern that if changes to the original order have not been disclosed to the trading crowd, then the trading crowd would be at a disadvantage relative to the solicited party who has knowledge of the changes to the terms of the original order. New Interpretation .06 clarifies that CBOE

Rule 4.1 continues to be applicable to Rule 6.9, notwithstanding the provisions of Paragraph (e) of Rule 6.9. Accordingly, the Commission believes that Amendment No. 1 raises no new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act<sup>13</sup> to approve Amendment No. 1 to the proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-95-07 and should be submitted by September 22, 1995.

#### V. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act, and, in particular, Section 6 of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-CBOE-95-07), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-21702 Filed 8-31-95; 8:45 am]

BILLING CODE 8010-01-M

<sup>10</sup> See CBOE Rule 4.1.

<sup>11</sup> For example, under the priority rules, when an original order is disclosed in advance of a solicitation, and the matching order both matches the disclosed original order's limit and improves the market, the matching order has priority over other orders in the crowd (subject to customer limit order book priorities set forth in Rule 6.45). See CBOE Rule 6.9(b). Similarly, when a matching order does not match the original order's limit and does not improve the market, it does not have priority over other bids and offers represented in the crowd even if the original order was disclosed to the crowd for the full solicitation period. See CBOE Rule 6.9(c).

<sup>12</sup> See Amendment No. 1, *supra* note 4.

<sup>13</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2) (1988).

<sup>14</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>15</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>9</sup> *Id.* If the changes to the original order were not disclosed to the trading crowd, then the trading crowd would still be at a disadvantage to the solicited person who did have knowledge of the changes to the terms of the original order. The solicited person with knowledge of the changes to the original order then would have the opportunity to benefit from this knowledge that the trading crowd did not have. Thus, under the CBOE's proposal, all trading based on that knowledge is prohibited until the information is disclosed to the trading crowd. *Id.*